United States Supreme Court

Nos. .....

October Term, 1942.

HARBORSIDE WAREHOUSE COMPANY, INC., a corporation, *Petitioner,* *vs.* THE CITY OF JERSEY CITY, a municipal corporation, and THE STATE BOARD OF TAX APPEALS, OF THE STATE OF NEW JERSEY.	**On Application for Writ of Certiorari.** **(1935 Tax)**
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BRIEF IN SUPPORT OF PETITION FOR WRIT OR WRITS OF CERTIORARI.

I.

Opinions Below.

The opinion of the New Jersey State Board of Tax Appeals is reported under the title of *Harborside Ware-*

house Co. Inc. v. *Jersey City, &c.*, in 19 N. J. Misc. Rep. page 222, and is printed in the Record herein at page 60. The opinion of the New Jersey Supreme Court is reported under the same title in 128 N. J. Law, page 263, and is printed in the Record at page 603. The opinion of the Court of Errors and Appeals is reported under the same title in 129 N. J. Law, page 62, and is printed in the Record at page 616.

II.

Basis of Jurisdiction.

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended (U. S. C. A., Title 28, Section 344(b), in that Petitioner by the judgment of the New Jersey State Board of Tax Appeals, affirmed by the New Jersey Supreme Court, and affirmed by the New Jersey Court of Errrors and Appeals, has been denied due process of law and the equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

III.

Statement of the Case.

A Statement of the Case is given under the several headings set forth in the Petition presented herewith at pages 3-36, *ante*, and in the interest of brevity it is not repeated here, but is referred to and incorporated herein as though set forth at length.

IV.

Specification of Errors.

A specification of the errors intended to be argued has been given in the accompanying Petition under the heading "Question Presented" (*ante*, p. 2), and again in the interest of brevity is not repeated here, but is referred to and incorporated herein as though set forth at length.

V.

Argument.

Petitioner was entitled to notice of the asserted action of the State Board of Tax Appeals in making a Personal Visit to the property of Petitioner, with an opportunity to be heard regarding its action, its qualifications and its method of determining value.

The facts involved; the status and effect of the evidence; the State Board's disregard of the facts, the evidence, and the applicable law; and the arbitrary fixing of a valuation of the taxpayer's property upon a personal visit to the property without notice to the taxpayer or an opportunity to be heard, are so fully stated in the Petition that a repetition of them here seems unwarranted.

And that the action of the State Board is utterly violative of the fundamental principles of due process and equal protection, seems also so patent and obvious that extensive argument and citation of authorities is not requisite.

Those fundamental principles have been recognized and asserted by judicial decisions in this Court and in the New Jersey Courts on numerous occasions. A few excerpts may not be inappropriate.

In *State Tims, et al.* v. *Newark,* 25 N. J. Law 399, at pages 425-427 (1856), it was stated by Mr. Justice RYERSON, speaking for the Supreme Court, that:

> "Another reason assigned for setting aside these proceedings is also, in my opinion, well founded, *viz.*, that no notice of any of them was given to the prosecutors; that in effect the first notice was the execution. It is admitted that the act does not in its terms require notice, that none was in fact given, and that the prosecutors have not appeared in any stage of the proceedings, except here, either in person or by counsel.
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> "It is contended that this proceeding is an exercise of the taxing power under the authority of the legislature, that the act does not require notice, and that consequently none is necessary. Conceding this, it does not follow that the legislature can tax arbitrarily, and without giving an opportunity of being heard. The practice is the other way; all our tax laws require notice, and provide a tribunal to hear and determine. But this is not the precise question before us. Here the legislature have constituted a special tribunal, the common council and the commissioners. So far as relates to the passage of the resolutions authorizing the construction of the sewer, they act in their legislative capacity; but so far as regards how much of the expense is to be borne by the city, and how much by individuals, and how much each owner is to bear, they act judicially.
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> "It is true the act does not require notice of any of these proceedings, but the law presumes, that, so far as their proceedings are in their nature judicial, the legislature intended it. That the legislature would not organize a special judicial tribunal to ascertain if any and how much of the property of individuals should be taken for a public improvement, and require them to proceed to condemnation without hearing the persons to be affected, the presumption would be, in the absence of all directions in the statute, that the legislature intended that the tribunal should require reasonable notice.

"It is a well settled principle, and laying at the foundation of the administration of justice, that no one is to be condemned in person or estate without an opportunity of presenting his case, and that, too, under a statutory proceeding which is silent upon the question of notice. 2 Harr. R. 399, *New Jersey Turnpike* v. *Hall;* 2 Green 520, *Youngs* v. *Overseers of Hardiston;* 14 Mass. 222, *Chase* v. *Hathaway;* 15 Johns. R. 538, *Kinderhook* v. *Claw;* 8 Vermont 389, *Corliss* v. *Corliss,* 6 Johns. R. 281, *Rathbun* v. *Miller;* 15 Wend. 374, *Owners* v. *Mayor of Albany.*"

In *Long Dock Company* v. *State Board of Assessors,* 86 N. J. Law 592, at pages 600-601 (1914), Mr. Justice SWAYZE, speaking for the Court of Errors and Appeals, said:

"* * * While the state board are neither jurors nor judges, the importance of the comparison lies in the fact that the rule applied since 1650 to jurors, and perhaps for an even longer time to judges, illustrates the fundamental principle that a hearing in order to comply with the law, must be a hearing at which adverse witnesses may be met and cross-examined. Our law is careful to secure, as Blackstone says, that evidence of facts shall be given publicly in court. The right to cross-examine witnesses as to facts is of the very essence of civilized judicial procedure, and there is no rule exempting from cross-examination witnesses who happen to be jurors also. Even judges are not exempt. *Wigm., supra.* One of the reasons given for exempting judges from the obligations of witnesses in ther own courts is the difficulty of their presiding at their own cross-examination. This difficulty is not insuperable. If it were, the courts would be subject to the mocking question of Henry the Fourth to one of his judges as to the procedure if the judge were the sole witness of a murder. The legislature has power to provide for the taking of testimony of witnesses who happen also to be members of the tribunal. It has necessarily done so in this case by making the knowledge of

members of the board evidential, and providing for a review by the court of the amount of the tax and the excessiveness or insufficiency of the assessment.* There can be no such review unless all the facts before the board are presented to the court. The legislature has taken pains also to provide for a hearing, for process of subpoena and for the examination of witnesses. *Comp. Stat., p. 5270, pl. 456.* A hearing must be a real, not a sham, hearing. *Central of Georgia Railway* v. *Wright,* 207 U. S. 127; *Londoner* v. *Denver,* 210 Id. 373; *Interstate Commerce Com.* v. *Louisville and N. R. Co.,* 227 Id. 88; *Erie Railroad Co.* v. *Paterson,* 79 N. J. L. 512. Even in a tax case, said the court in Londoner v. Denver, a hearing in its very essence demands that he who is entitled to it shall have the right to support his allegations by argument, however brief, and, if need be, by proof, however, informal. In order to determine whether there is need of proof on his part, the taxpayer must know what he has to meet. It is not consistent with the methods of judicial tribunals nor of special tribunals seeking to do justice, to give the taxpayer no chance to know what the case made against him may be. In this case, the members must have stated to each other in secret session their knowledge of the value of this property unless they merely added the twenty per cent. in an arbitrary way—a procedure we cannot impute to them. Such a statement of the individual knowledge of each differs in no essential respect from testimony as to other facts except in its secrecy, in its lacking the sanction of an oath, and its freedom from the safeguard of cross-examination. So open to abuse is such a method, so lacking in the ordinary requirements of a hearing, that we may safely say that no man's property is safe from confiscation if taxing boards can without evidence and behind closed doors add twenty per cent. to a valuation on which sworn experts on both sides are in

* This power is not vested in the present State Board of Tax Appeals, as pointed out *infra,* at pages 61, *et seq.*

substantial agreement. If twenty per cent. can be added in this way, a thousand per cent. can be added, and the redress through the open public methods of a judicial tribunal which the legislature has been careful to provide becomes a mere delusion and the legislative intent is frustrated. We cannot sanction acts of a mere administrative board which run counter to the legislative will as expressed in the very statute from which the board derives its powers. If we did, those acts might be treated by the federal courts as a violation by the state itself of the provisions of the fourteenth amendment. *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20; *Home Tel. and Tel. Co.* v. *Los Angeles*, 227 Id. 278. The observance by the state of its obligations under the federal constitution is in the keeping of the legislature and the courts, not in that of its administrative boards."

In *Trenton and Mercer County Traction Corp.* v. *Mercer Co. Board of Taxation, et al.*, 92 N. J. Law 398, at pages 400-401 (1918), Mr. Justice SWAYZE, speaking for the Court of Errors and Appeals, said:

"There is, however, a difficulty that goes deeper. An important portion of the evidence on which the Supreme Court relied as sustaining the action of the county board was not before that board. The situation was this: Various estimates of expert witnesses were before the county board. None was adopted or followed. The board took a valuation of its own expert and added twenty per cent. indifferently to real and personal property, to personal property like rails and wires and apparatus which was subject to rapid depreciation by wear, as well as to land, the value of which was a site value and not subject to depreciation by wear, and added the same percentage to property in the populous city of Trenton and in suburban and agricultural communities. This uniformity of percentage challenges attention to any evidence in its support, and we find none. The only evidence to sustain the addition of twenty per cent,

is found in the testimony of members of the county board of taxation, taken for the first time in the Supreme Court under a rule to take depositions obtained by the prosecutor of the *certiorari*. Such evidence cannot sustain a finding that antedates the evidence. That evidence was necessary in the very point decided in *Long Dock Co.* v. *State Board of Assessors*, 86 N. J. L. 592. Although we may assume that the members of the county board would have testified to the same opinion of value if they had offered themselves as witnesses before the board, this does not suffice. The reasons why it does not suffice are stated in the opinion of the case cited. The importance of requiring the same safeguards as to evidence given by members of the board as by other witnesses, is well shown by the evidence of one member of the board in the present case, and it was stipulated that the testimony of the other members of the board, if they had been sworn, would be substantially the same. On examination by counsel for the board and the other defendants, this witness testified that he was not an expert in the valuation of railroad property in any way himself and was obliged to rely upon the evidence produced in this case as to value.

"The Supreme Court was clearly in error in saying that this testimony 'was admitted and treated with all the formal requirements, and subject to all the scrutiny and criticism that characterize opinion evidence in a formal litigation *inter partes* at law or in equity.' The difficulty with the testimony was that it was mere opinion coming from witnesses who confessedly knew nothing about the subject of their testimony. The requirement of special knowledge of his subject before a witness can express a mere opinion, is a substantial rather than a formal requirement. Such evidence if subjected to the scrutiny and criticism that characterize opinion evidence in a formal litigation at law or in equity would be rejected. It must for the same reason be rejected here. Without it, there is no evidence sustaining some three hundred thousand dollars increased valuation."

In *Town of Kearny* v. *State Board of Taxes, etc.*, 4 N. J. Misc. page 834 (1926), the Supreme Court, *per curiam*, stated that:

> " * * * The decision of the state board is attacked on the ground, that it is not supported by any legal evidence and, in support of that contention, the prosecutor cites the testimony of the president of the board (at page 281 of the record), viz.: 'That the board felt justified to some extent in ignoring the testimony of the experts on both sides, and taking the judgment of its own trained appraiser.' The board adopted *in toto* an appraisal of $2,657,628 made by Mr. Frank O'Connor, the clerk and field secretary of the board. No opportunity was given the prosecutor to examine it, rebut it, or cross-examine upon it before it was adopted as the judgment of the state board. This is not the kind of a hearing that is required in a judicial procedure. The hearing must be a real, not a sham, hearing; the parties have a right to support their allegations, if need be by proof, to determine whether there is need of proof the parties must know what they are to meet. *Long Dock Co.* v. *State Board*, 86 N. J. L. 592.
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> "Such a procedure as is shown by this record, is not due process of law. *Trenton &c., Traction Co.* v. *Mercer County Tax Board*, 92 N. J. L. 398, 402. The judgment to be sustained must be based upon evidence. Gibbs v. State Board of Taxes and Assessment, 3 N. J. Adv. R. 986.
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> "For these reasons the judgment of the state board of taxes and assessment in this case is reversed and set aside."

In *United New Jersey Railroad &c. Co.* v. *State Board of Taxes &c.*, 100 N. J. Law 131, at pages 136-138 (1924), Mr. Justice Black, speaking for the Court of Errors and Appeals, said:

> "The courts cannot ignore the plain mandate of the statute, for, as was said, in the case of *Douglass* v. *Board of Chosen Freeholders*, 38 N. J. L. 216, it is

no province of the courts to supervise legislation. The record in this case is an apt illustration of the wisdom of the legislature in inserting such a provision in the statute. The conclusions of this board fixing valuations should not be set aside, except for palpable error, to use the words of Chief Justice Beasley. So, this court has said, in this class of cases, where the Supreme Court dealt with the weight of evidence on the question of valuation, it properly required that the evidence should preponderate against the valuation of the state board before it would be set aside. It is well recognised, and on the plainest principles of justice, that the judgment, even of a court, is legally erroneous, if there is no evidence to support it, since without evidence its judgment is no better than an arbitrary edict. This court then held, that the state board could not add twenty per cent. to the valuations on which the experts on both sides were in substantial accord arbitrarily and without evidence. *Long Dock Co.* v. *State Board of Assessors,* 86 Id. 592, 596. So, the personal knowledge and judgment possessed by the state board does not mean that something may be added to the valuations arbitrarily and without evidence. On the other hand, the effect of our adjudications is to require that, on review, the courts should not set aside the judgments of the state tribunal fixing valuations, which are based on evidence.

"We have therefore judgments of the Supreme Court, which are sought to be sustained upon reasons stated by the court, which are unsatisfactory, if not entirely untenable. These are rested as to a valuation at a point, where neither set of experts agree, and at a point somewhere between the high and low values fixed by the two sets of experts, the court, apparently, having overlooked the provisions of the statute, which expressly declares that these assessors shall be entitled to use their personal knowledge and judgment in ascertaining from the evidence the value of the property assessed. *4 Comp. Stat., p. 5272, § 16; Pamph. L. 1888, p. 280.*

"We conclude, therefore, after considering this record, and for the reasons stated, that the judgments of the Supreme Court involved in these three groups on appeal are without legal evidence to support them. They are therefore set aside and reversed, and the judgments of the state board of taxes and assessment are affirmed."

In *Hackensack Water Co.* v. *North Bergen Township,* 18 N. J. Misc. Rep. 627, at page 630 (1940), Quinn, President, who wrote the opinion of the State Board in the instant case, said, again with regard to the taxing district's witness:

"In contrast to the outstanding qualifications of petitioner's valuation expert, the witness through whose testimony the respondent attempted to meet the force of the former's testimony, was the township assessor, who, while technically competent to testify as such, possesses none of the special qualifications requisite to trustworthy appraisal in this specialized field of utility valuation. He has been an assessor for eight years, but has never had any experience as an engineer, builder or contractor, or in the sale or purchase of property of the character under appeal. * * * His testimony carried little or no probative weight."

In *Citizens' Gas Light Co.* v. *Alden,* 44 N. J. Law 648, at 652 (1882), Mr. Justice KNAPP, speaking for the Court of Errors and Appeals, said:

"Where a municipality, whose proceedings are attacked under a writ issued in aid of ejectment, stands as the only party in the writ, and it appears to the court that there are others in interest to be affected by the controversy, they will not proceed in it until such others are brought in, (*Fleischauer* v. *West Hoboken,* 10 Vroom 421,) and that upon principles of justice so obvious as to underlie all rational systems of law. No one can be bound without first being heard."

And in *Vanderhoven* v. *City of Rahway*, 120 N. J. Law 610, at pages 613-614 (1938), Mr. Justice PORTER, speaking for the Supreme Court, said:

> "In this situation we are of the opinion that the owner of the property complained of is entitled to notice without which the proceedings can have no validity.
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> "The only notice given here was after the council had acted and it was not to give the prosecutor a hearing, but simply of notification that it had summarily decreed that she must demolish her buildings within thirty days. True she was then given an opportunity to appeal to the common council for a modification of its decision, but that is in no sense a hearing on a proposed action such as she was, in our view, clearly entitled to. The law is well established in this state that where property is to be taken for public use notice of such intention must first be given the owners so they may be heard, whether required by statute or not. Moreover, the statute under which this ordinance was enacted provided for notice in these words: 'Before any proceeding is taken pursuant to the provisions hereof, the governing body of the municipality shall cause notice of the contemplated removal or destruction of the building, wall or structure, to be given to the owner of the land affected thereby,' *Rev. Stat.* 40:48-1, *subsection* 15.
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> "A few of the pertinent New Jersey cases on the necessity for notice follow: *New Jersey Turnpike Co.* v. *Hall*, 17 N. J. L. 337; *State* v. *Jersey City*, 24 Id. 662; *Vantilburgh* v. *Newark*, 25 Id. 309; *State of Newark*, 25 Id. 399 (at p. 411); *State* v. *Orange*, 32 Id. 49; *Hutton* v. *Camden*, 39 Id. 122; *Davis* v. *Howell*, 47 Id. 280; *Kearney* v. *Ballantine*, 54 Id. 194.
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> "Concluding that the proceedings of the defendant were void because of this lack of notice resulting in a lack of opportunity for the prosecutor to be heard makes unnecessary a consideration of the other points

raised as to the constitutionality of the said statute or other alleged irregularities in the proceedings.

"The proceedings are set aside, with costs."

And this Court has again and again had occasion to judicially determine that due process requires notice and an opportunity to be heard, not by shadow form but in substance.

In *Hovey* v. *Elliott*, 167 U. S. 409, 417, 418; 42 L. Ed. 215, 221 (1897); Mr. Justice WHITE, speaking for the Court said:

> "• • • Bayley, B., says he knows of no case in which you are to have a judicial proceeding by which a man is to be deprived of any part of his property without his having an opportunity of being heard. • • •
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> "And that the judicial department of the government is, in the nature of things, necessarily governed in the exercise of its functions by the rule of due process of law, is well illustrated by another observation of Judge Cooley, immediately following the language just quoted, saying: 'The definition here given is apt and suitable as applied to judicial proceedings, which cannot be valid unless they "proceed upon inquiry," and "render judgment only after trial."' "

In *Rees* v. *The City of Watertown*, 86 U. S. 107, 122; 22 L. Ed. 72, 76-77 (1874); Mr. Justice Hunt said:

> "Thus, assume that the plaintiff is entitled to the payment of his judgment, and that the defendant neglects its duty in refusing to raise the amount by taxation, it does not follow that this court may order the amount to be made from the private estate of one of its citizens. This summary proceeding would involve a violation of the rights of the latter. He has never been heard in court. He has had no opportunity to establish a defense to the debt itself, or if the judgment is valid, to show that his property is not liable

> to its payment. * * * The proceeding supposed would violate that fundamental principle contained in chapter 29 of *Magna Charta*, and embodied in the Constitution of the United States, that no man shall be deprived of his property without due process of law—that is, he must be served with notice of the proceeding, and have a day in court to make his defense. *Westervelt* v. *Gregg*, 12 N. Y. 209 * * *
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> "The general principle of law to which we have adverted is not disturbed by these references. It is applicable to the case before us. Whether, in fact, the individual has a defense to the debt, or by way of exemption, or is without defense, is not important. To assume that he has none and, therefore, that he is entitled to no day in court, is to assume against him the very point he may wish to contest."

In *Londoner* v. *City and County of Denver*, 210 U. S. 373, 386; 52 L. Ed. 1103, 1112 (1908); Mr. Justice Moody, said:

> "If it is enough that, under such circumstances, an opportunity is given to submit in writing all objections to and complaints of the tax to the board, then there was a hearing afforded in the case at bar. But we think that something more than that, even in proceedings for taxation, is required by due process of law. Many requirements essential in strictly judicial proceedings may be dispensed with in proceedings of this nature. But even here a hearing, in its very essence, demands that he who is entitled to it shall have the right to support his allegations by argument, however brief; and, if need be, by proof, however informal. (Cases cited.)
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> "It is apparent that such a hearing was denied to the plaintiffs in error. The denial was by the city council, which, while acting as a board of equalization, represents the state. Raymond v. Chicago Union Traction Co. 207 U. S. 20, ante, 78, 28 Sup. Ct. Rep. 7. The assessment was therefore void, and the plaintiffs

in error were entitled to a decree discharging their lands from a lien on account of it."

In *Roller* v. *Holly*, 176 U. S. 398, 409; 44 L. Ed. 520, 524 (1900); Mr. Justice BROWN said:

> "The right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion.
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> "That a man is entitled to some notice before he can be deprived of his liberty or property is an axiom of the law to which no citation of authority would give additional weight; but upon the question of the length of such notice there is a singular dearth of judicial decision. It is manifest that the requirement of notice would be of no value whatever, unless such notice were reasonable and adequate for the purpose."

In *Patton* v. *United States* 281 U. S. 276, 292; 74 L. Ed. 854, 860 (1930); Mr. Justice SUTHERLAND said:

> "* * * And no attempt has been made to overthrow it save by what amounts to little more than a suggestion that, by reducing the number of the jury to eleven or ten, the infraction of the Constitution is slight, and the courts may be trusted to see that the process of reduction shall not be unduly extended. But the constitutional question cannot thus be settled by the simple process of ascertaining that the infraction assailed is unimportant when compared with similar but more serious infractions which might be conceived. To uphold the voluntary reduction of a jury from twelve to eleven upon the ground that the reduction—though it destroys the jury of the Constitution—is only a slight reduction, is not to interpret that instrument but to disregard it. It is not our province to measure the extent to which the Constitution has been contravened and ignore the violation, if, in our opinion, it is not, relatively, as bad as it might have been."

In *Fillipon* v. *Albion Vein Slate Co.*, 250 U. S. 76, 81; 63 L. Ed. 853, 855 (1919), Mr. Justice PITNEY said:

> "We entertain no doubt that the orderly conduct of a trial by jury, *essential to the proper protection of the right to be heard,* entitles the parties who attended for the purpose to be present in person or by counsel *at all proceedings from the time the jury is impaneled until it is discharged after rendering the verdict.* Where a jury has retired to consider of their verdict, and supplementary instructions are required, either because asked for by the jury or for other reasons, they ought to be given *either in the presence of counsel or after notice and an opportunity to be present;* and written instructions ought not to be sent to the jury *without notice to counsel and an opportunity to object.* Under ordinary circumstances, and wherever practicable, the jury ought to be recalled to the court room, *where counsel are entitled to anticipate, and bound to presume, in the absence of notice to the contrary, that all proceedings in the trial will be had.* In this case *the trial court erred in giving a supplementary instruction to the jury in the absence of the parties and without affording them an opportunity either to be present or to make timely objection to the instruction.* * * *
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> "The circuit court of appeals considered that * * * no harm had been done, and none was probable to arise under like circumstances, and hence affirmed the judgment.
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> "It is not correct, however, to regard the opportunity of afterwards excepting to the instruction and to the manner of giving it as equivalent to an opportunity to be present during the proceedings. * * *
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> "And, of course, in jury trials erroneous rulings are presumptively injurious, especially those embodied in instructions to the jury; and they furnish ground for reversal unless it affirmatively appears that they were harmless.
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> "In this case, so far from the supplementary instruction being harmless, in our opinion it was erro-

neous and calculated to mislead the jury *in that it excluded a material element that needed to be considered in determining whether plaintiff should be held guilty of contributory negligence under the particular hypothesis referred to in the jury's question.*"

The subject is very fully considered and discussed in *McGehee's "Due Process of Law,"* (1906), especially at pages 75 and 76, where he states that:

"* * * In *Dr. Bently's Case,* Fortescue, J., quaintly remarks: 'The laws of God and man both give the party an opportunity to make his defense, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defense. Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldest not eat? And the same question was put to Eve also.'[5]

"This doctrine was adopted into American jurisprudence to the fullest extent, and was referred to the principles either of natural justice,[6] of international law,[7] or of the common law.[8] 'It is a rule,' said Mr. Justice Story, 'founded in the first principles of natural justice, that a party shall have an opportunity to be heard in his defense before his property is condemned.' And of a foreign judgment which violated this rule, he proceeded: 'Upon the eternal principles of justice it ought to have no binding obligation upon the rights or property of the subjects of other nations, for it tramples under foot all the doctrines of international law.'[9] 'It is a rule as old as the law,' the Supreme Court has said, 'and never more to be respected than now, that no one shall be

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[5] Rex v. Cambridge University, 1 Stra. 558, 567.
[6] Lafayette Ins. Co. v. French, 18 How. (U. S.) 404.
[7] D'Arcy v. Ketchum, 11 How. (U. S.) 165.
[8] Picquet v. Swan, 5 Mason (U. S.) 35, *per* Story, J.
[9] Bradstreet v. Neptune Ins. Co., 3 Sumn. (U. S.) 600. And see Windsor v. McVeigh, 93 U. S. 274.

> personally bound until he has had his day in court; by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity want all the attributes of a judicial determination. It is judicial usurpation and oppression, and never can be upheld where justice is justly administered.' "[1]
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> "The clauses in our constitutions guaranteeing 'the law of the land' and 'due process of law,' have always been held to include the opportunity to present any defenses which might affect the decision of the court or tribunal. The opportunity to defend implies notice of an official inquiry into the facts. * * * "[2]

Thus, from the beginning of time to the present day, the opportunity to be heard regarding one's rights, affecting his life, liberty, and property, has been a fundamental and invariable factor in the administering of justice, to which the Great Creator gave recognition, and which has been recognized and applied universally by man's tribunals everywhere.

How can Petitioner know and determine what motivated the State Board in disregarding the evidence adduced before it and ignoring the settled law applicable, or know and determine how, in what manner, by what method, if any, or by what process of reasoning, or upon what facts, or absence of facts, it reached its conclusion of value of the property involved,—a valuation which differs from any figure which otherwise appears in the record,—from the original assessment (Record, p. 411), from the reproduction figures submitted by the City (but which were not submitted for "tax purposes",—Record, p. 99, lines 20-40; p.

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[1] Galpin v. Page, 18 Wall. (U. S.) 350; Hovey v. Elliott, 167 U. S. 409.

[2] Simon v. Craft, 182 U. S. 436; Hooker v. Los Angeles, 188 U. S. 314, 318.

100, lines 1-28); and from the sale figure submitted by Petitioner (Record, p. 280, line 15; p. 297, line 26), which is the test of valuation for tax purposes by the statute and judicial decision. (See *ante*, pp. 5-6, 11-12).

For aught Petitioner knows, the Board, in substituting its own figure (Record, p. 73, lines 33, *et seq.*), may have resorted to the so-called "cubical contents" method used by Mr. Robertson, which is the merest guess, or the "quantity survey" used by Mr. Phillips, which is not accurate (*ante*, p. 9), or by giving effect to cost of reproduction, which has been judicially condemned, even by the State Board itself (*ante*, pp. 11-12), or may have used some *secret* or otherwise illegal calculation, of which Petitioner has never been apprised, and concerning either or any of which, and concerning the qualifications of the Board to fix the valuation as required by the statute and decisions, Petitioner had no opportunity to be heard in advance of judgment; for it was not until the Board's opinion was announced that Petitioner had any knowledge of this most extraordinary procedure. But certain it must be that the Board did not adhere to the statute's plain mandate and the Court's plain rulings, including President Quinn's own previous judicial declarations (*ante*, pp. 5-6, 11-12); for it has not been shown to have possessed the qualifications necessary to form a reliable opinion of sale valuation as between the willing buyer and the willing seller, and if it did adhere to the statutory and judicial mandate fixing the standard of valuation, it had no right to disregard and ignore the evidence of Mr. Ryer and Mr. Stack, which was the *only legal evidence in the case* which did conform to that standard and test (Record, p. 280, line 15, and p. 297, line 26, *ante*, pp. 15, 16).

It seems to us, therefore, that if, as the record now stands and as it stood on review in the New Jersey Supreme Court and in the Court of Errors and Appeals, it cannot be certainly determined on what theory the State Board

reached its secret conclusion and determination of valuation, or if it cannot be determined whether it based it upon a lawful or unlawful theory, then this Court should reverse the judgments of the State tribunals upon the authority of its recently enunciated principles, regardless of the other elements of error urged, in the case of

> *Williams* v. *North Carolina*, 63 Sup. Ct., 207; U. S. Adv. Ops. 1942-1943, Vol. 87, No. 5, page 189, at pages 191-192 Dec. 21, 1942).

There Mr. Justice DOUGLAS, speaking for this Court, said:

> "In the second place, the verdict against petitioners was a general one. Hence even though the doctrine of Bell v. Bell, 181 U. S. 175, 45 L. ed. 804, 21 S. Ct. 551, supra, were to be deemed applicable here, we cannot determine on this record that petitioners were not convicted on the other theory on which the case was tried and submitted, viz., the invalidity of the Nevada decrees because of Nevada's lack of jurisdiction over the defendants in the divorce suits. That is to say, the verdict of the jury for all we know may have been rendered on that ground alone, since it did not specify the basis on which it rested. It therefore follows here as in Stromberg v. California, 283 U. S. 359, 368, 75 L. ed. 1117, 1122, 51 S. Ct. 532, 73 A. L. R. 1484, that if one of the grounds for conviction is invalid under the Federal Constitution, the judgment cannot be sustained. No reason has been suggested why the rule of the Stromberg Case is inapplicable here. Nor has any reason been advanced why the rule of the Stromberg Case is not both appropriate and necessary for the protection of rights of the accused. To say that a general verdict of guilty should be upheld though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to countenance a procedure which would cause a serious impairment of constitutional rights."

The New Jersey Supreme Court is required by statute (R. S. 2:81-8) to review the record of the State Board and make its own findings of fact, as well as determination of law, and if it fails to do so, the Court of Errors and Appeals should, and has by other precedent, remitted the record on appeal and directed the Supreme Court to do so, or has retained the record and reviewed and determined the facts itself.

Freudenreich v. *Mayor, &c. of Fairview,* 114 N. J. Law 290, at 294;
Harman v. *Reed,* 108 N. J. Law 191, at 194;
Smith v. *Carty,* 120 N. J. Law 335, at 340;
Jordan v. *Borough of Dumont,* 105 N. J. Law 197;
N. J. &c. Water Co. v. *Board of Public Utility Commissioners,* 123 N. J. Law 303, at 308

where Mr. Justice PERSKIE, speaking for the Court of Errors and Appeals, said:

> "With these principles in mind, it is argued that the necessary inference to be drawn from the quoted language of the opinion of our Supreme Court is that the Supreme Court did make the same factual finding that the Board made. That may be so. But whether it did or did not make the required factual finding is not altogether free from debate. We regard it unwise to consider and determine a constitutional question upon such a state of the record.
>
> "We could, of course, remand the cause to the Supreme Court to make a definite finding. But we have frequently acknowledged our power to pass upon the merits in fairly comparable circumstances (*Jordan* v. *Borough of Dumont,* 105 N. J. L. 197, (and cases collated at p. 198); 143 Atl. Rep. 843; *Harman* v. *Reed,* 108 N. J. L. 191; 155 Atl. Rep. 145), and have at times exercised that power when we deemed it desirable to do so. *Smith* v. *Carty,* 120 N. J. L. 335 (at p. 340); 199 Atl. Rep. 12. Since all proofs are

before us, and since we are of the opinion that the protracted litigation of the issues here involved should be ended, we choose to adopt the course we have followed in *Smith* v. *Carty,* supra, and shall consider and determine this cause upon the merits."

And in *Gibbs* v. *State Board,* 101 N. J. Law 371, 374, Mr. Justice KATZENBACH, speaking for the Court of Errors and Appeals said:

"Under section 11 of the *certiorari* act of 1903 (*Comp. Stat., p. 405*), power is given to the Supreme Court to determine disputed questions of fact, as well as law. The Supreme Court did not determine any question of fact as appears from the language of its opinion above quoted. The testimony taken in the case should, in our opinion, be reviewed. The case will therefore be remanded to the Supreme Court, with the direction that it determine the disputed questions of fact."

Revised Statutes of N. J. 1937, 2:81-8:

2:81-8. *Questions of fact and law determined; testimony; Reversal or affirmance.* When a writ of certiorari is brought to remove any tax or assessment, or other order or proceeding concerning any local or public improvement, or to review the proceedings of any special statutory tribunal, or to review the suspension, dismissal, retirement or reduction in rank of a person holding an office or position, state, county or municipal from which he is removable only for cause and after trial, the court shall determine disputed questions of fact as well as of law, and inquire into the facts by depositions taken on notice or in such other manner as may be according to the practice of the court.

"The testimony taken before the tribunal, board or officer whose action is being reviewed may be used by any party and shall be considered by the court as if it had been taken by deposition on notice. Additional testimony may be taken by any party. The

> court may reverse or affirm, in whole or in part, such tax, assessment, or other order or proceeding, finding or determination, suspension, dismissal, retirement or reduction in rank reviewed."

But it is respectfully submitted that the Supreme Court opinion does not express such a review and finding of facts in the instant case (Record, pp. 603-607).

The Supreme Court stated in its opinion (Record, p. 604, line 38 *et seq.*), that:

> "The testimony of three witnesses on behalf of the prosecutor is that the value is $3,000,000. and $3,160,000. while that of two witnesses for the defendants ranged from about $6,000,000. to $7,000,000."
> * * *
> "We conclude that a factual question was presented and that there were proofs which justify the findings of the State Board."

This, it is respectfully submitted, is erroneous, as pointed out, *supra,* for the figures presented by the City's witnesses Robertson and Phillips (*ante,* p. 11) were not given for a "tax purpose", but simply to show their estimate of cost of reproduction less a slight allowance for depreciation. *There was no other testimony to establish "true value" for taxation purposes presented by the City,* except, perhaps, that shown by the Special Master's deed upon the public sale of the property, which was put in evidence by the City, and which showed a sale price of $2,100,000 (*ante,* pp. 17-18).

There was, therefore, *no factual* question presented, nor were there any *proofs to justify the findings of the State Board.*

The Supreme Court further stated (Record, p. 605, lines 16 *et seq.*) that:

> "There is a presumption in favor of the correctness of the assessments and the burden of proving

> that they were excessive is on the owner. Colonial Life Insurance Co. v. State Board of Tax Appeals, 126 N. J. L. 126."

Here, however, the State Board did not adopt the original assessment, which primarily may have the presumptive effect stated by the Court, and both the State Board and the Court failed to give consideration to the presumption in favor of the County Board's valuations, as indicated by the authorities cited at page 30, *ante*. But the Board caught a totally different figure out of the air and fixed that as the valuation. If its action in that respect is legally sustainable because the variance was not great, then it would be sustainable just the same if it had been millions in advance of the assessment. And, as expressed by Mr. Justice SUTHERLAND in *Patton* v. *United States*, quoted at page 51, *ante*, it is not the degree of variance involved that governs, but the fact that the Constitution is destroyed. The presumptive effect was gone when the Board laid aside the Assessor's figure and took its own different figure as the basis for its valuation, and the presumptive value of the County Board superseded it.

The Supreme Court disposed of the question of due process of law by intimating that there was nothing to complain about in the Board's acting as valuers of real property, or lack of opportunity to ascertain the method and course which the Board may have pursued in reaching its conclusion of value from its own inspection of the property (Record, p. 65, line 37, p. 73, line 32, p. 606, lines 18, 25), and indicating that:

> (a) Jurors often view premises in certain cases; and
>
> (b) That it is a proper function of the Board to use its own knowledge in appraising the taxable value of property (Record, p. 606, lines 18, 25).

(a) However, where a jury so views premises for the purposes which the Court stated, it is always done with full knowledge of the parties and their counsel, who have an opportunity to accompany the jurors, or if that be refused, a judgment rendered adverse to a complaining party is invalidated and reversed. It was that precise principle which Mr. Justice PITNEY discussed, speaking for this Court in *Fillipon* v. *Albion Vein Slate Co.*, cited *supra*, at page 52; and which was followed and applied by the Circuit Court of Appeals, 3rd Circuit, in *Breslin* v. *National Surety Co.*, 114 Fed. (2nd) 65, 68-9.

And recently this Court, in the case of *Enoch L. Johnson* v. *United States of America*, No. 273, October Term, 1942, has allowed a writ of certiorari to review a judgment of conviction where defendant was denied the right to be present on the argument before the Court, in Chambers, respecting the admission or rejection of evidence.

See, also,

Fina v. *United States*, 46 Fed. (2nd) 643, 644;
Arrington v. *Robertson*, 114 Fed. (2nd) 821, 823;
Nicola v. *United States*, 72 Fed. (2nd) 780, 783;
Farris v. *Interstate Circuit, Inc.*, 116 Fed. (2nd) 409, 412, where HOLMES, C. C. J., speaking for the Circuit Court of Appeals, 5th Circuit, said:

> "The consideration given by the jury to the testimony thus improperly admitted may or may not have affected its verdict. Since this court cannot be certain that it did not, *it must be presumed that reversible error was committed.*"

(b) The Supreme Court, it is respectfully submitted, also erred with regard to the State Board's function and power to use its personal knowledge in rendering its judgment, and failed to analyze the cases it cited in support of its

assertion in that respect. (Record, p. 606, line 37, p. 607, lines 31 *et seq.*)

The present State Board of Tax Appeals is of comparatively recent origin, having been created by the Legislature of the State of New Jersey by a statute approved *April 14, 1931,* effective July 1, 1931 (P. L. 1931, Ch. 100, p. 166; R. S. 54:2-1, *et seq.*).

The State Boards referred to in the decisions cited in the Supreme Court's opinion (Record, p. 607) were predecessors of the present State Board of Tax Appeals, and those cases were decided prior to the 1931 statute, the one in 86 N. J. Law, 592, in 1914, and the one in 100 N. J. Law, 131, in 1924.

They exercised an *assessing* function, and, under certain circumstances, the Board of Taxes and Assessment exercised an *appellate* function.

By Section 2 of the Act of April 14, 1931, it was provided that:

> "Said board shall do and perform all acts now required by any law to be done and performed by the State Board of Taxes and Assessment relative to the hearing and determination of tax appeals."

And by Section 4 of that Act it was provided that:

> "The board shall succeed to and exercise exclusively all the powers and perform all the duties concerning the *review, hearing and determination of appeals* concerning the assessment, collection, apportionment, or equalization of taxes which are now exercised or performed by or conferred and charged upon the State Board of Taxes and Assessment by virtue of any existing law or laws. *All tax appeals pending* before the State Board of Taxes and Assessment shall continue before and be determined by the board hereby established; and the said State Board of Tax Appeals shall have such other and further

> powers and perform such other and further duties in connection with the hearing and determination of tax appeals, as may be conferred or imposed upon it, from time to time."

And, as stated by President Quinn, in *City of New Brunswick* v. *Upsilon Chapter, &c.*, (1940), 18 N. J. Miscl. 147, at page 150:

> "We have heretofore recognized and applied the fundamental rule that, as a statutory tribunal, this board is strictly limited to the bounds of the jurisdiction prescribed by the legislation which constitutes it and defines its powers and duties. *Washington Township* v. *Mercer County Board of Taxation* (Supreme Court, 1914), 85 N. J. L. 547; 89 Atl. Rep. 1028; *Mellor* v. *Kaighn* (Court of Errors and Appeals, 1916), 89 N. J. L. 543; 99 Atl. Rep. 207."

But the cases cited by the Supreme Court involved the taxation of railroad property, which, as stated at page 5 *ante*, is governed by the Railroad Act, and not by the General Tax Act cited at pages 4 and 5, *ante*, under which the property of Petitioner was assessed. And by the Railroad Act, as pointed out in the decisions referred to by the Court, and which are also cited and quoted from herein (*ante*, pp. 41, 45), the *Assessors* were given statutory authority in Railroad assessments to exercise their personal knowledge. Nevertheless, those cases also emphatically hold that that *assessing* function is only to be exercised in a manner that comports with due process of law.

Furthermore, that pertained to the *assessing* power of the Board, which is quite different from its *appeal* power. And the *assessing* power is now exercised by the State Tax Commissioner (P. L. 1931, Ch. 336, p. 823, approved *April 28, 1931*, effective July 1, 1931). (R. S. 54:1-1, *et seq.*) By

that statute there was created a "State Tax department," which, by Section 1 of the Act,

> " * * * Shall succeed to and exercise exclusively all the powers and perform all the duties now exercised or performed by or conferred and charged upon the State Board of Taxes and Assessment by virtue of any existing law or laws, *excepting those relating to the review, hearing and determination of all appeals* concerning the assessment, collection, apportionment, or equalization of taxes. Said department shall have such other and further powers and perform such other and further duties in connection with *the assessment, collection, apportionment or equalization of taxes* and the administration of tax laws, as may be conferred or imposed upon it from time to time. All proceedings pending before the State Board of Taxes and Assessment *excepting tax appeals,* shall continue before and be determined by the State Tax Commissioner."

Section 2 of that Act provides, *inter alia,* that—

> "The chief officer of said department, to be denominated the 'State Tax Commissioner,' shall be appointed by the Governor, by and with the advice and consent of the Senate, to serve for the term of five years, and until his successor shall be appointed and qualified. * * * "

Section 8 provides that—

> "All acts and parts of acts inconsistent with this act are hereby repealed and this act shall be liberally construed and shall take effect on the first day of July nineteen hundred and thirty-one.
>
> "Approved April 28, 1941."

It is elementary that the later Act supersedes the earlier Act.

And *R. S. 54:1-6* provides that—

> "The commissioner shall perform all acts formerly required by law to be performed by the state board of taxes and assessment, *except the hearing and determination of tax appeals*, and shall carry into effect and execute the provisions of this chapter."

R. S. 54:2-35 provides that—

> Any action or determination of a county board of taxation may be appealed *for review* to the state board of tax appeals under such rules and regulations as it may from time to time prescribe, and it may *review* such action and proceedings and give such judgment therein as it may think proper."

R. S. 54:2-39 provides that—

> "Any appellant who is dissatisfied with the judgment of the county board of taxation upon his appeal, may appeal from that judgment to the state board of tax appeals by filing a petition of appeal to the board, in manner and form to be by said board prescribed, within one month from the date fixed for final decisions by the county boards, and the state board shall proceed summarily to hear and determine all such *appeals* and render its judgment thereon as soon as may be."

And with respect to appeals to the State Board of Tax Appeals from the determinations of the State Tax Commissioner, *R. S. 54:1-41* provides that—

> "54:1-41, appeals to state board of tax appeals; procedure.
>
> "Any person, taxing district, municipality, or county aggrieved by any act, proceeding, ruling, decision, or determination of the state tax department or of the state tax commissioner, may appeal there-

> from to the state board of tax appeals by filing a petition of appeal to the board in manner and form and within the time and subject to such terms and conditions as the board shall by reasonable rules and regulations prescribe unless the time and terms are fixed by statute, provided, however, that nothing herein contained shall be construed to permit any person to appeal to the board from the assessment or any other determination of the state tax department or commissioner in a transfer inheritance tax proceeding."

R. S. 54:2-34 defines and limits the jurisdiction of the State Board to *review, hear* and *determine appeals,* and provides as follows:

> "54:2-34. Appeals from state tax department and state tax commissioner.
>
> "The board shall review, hear and determine all appeals by any person, taxing district, municipality or county aggrieved by any act, proceeding, ruling, decision or determination of the state tax department or of the state tax commissioner."

It is obvious, therefore, that upon the creation of the State Board of Tax Appeals by Chapter 100 of the Laws of 1931, approved April 14, 1931, and the creation of the State Tax Department and a State Tax Commissioner by Chapter 336 of the Laws of 1931, approved April 28, 1931, the previously existing State Board of Tax Appeals, with its dual *assessing* and *appellate* function, ceased to exist, and the *assessing* function and the *appellate* function were separated, the *assessing* function being vested in the State Tax Department and the State Tax Commissioner and the *appellate* function in the State Board of Tax Appeals.

By the statute *R. S. 54:22-5* it is provided that—

> "In order to obtain the facts necessary for the discharge of his duties under Chapters 19 to 29 of

> this title (§ 54:19-1, *et seq.*), the state tax commissioner may use such lawful means as he may deem necessary. * * * The commissioner shall also use the returns provided for in Chapter 23 of this title (§ 54:23-1, *et seq.*), but they shall not be conclusive. If any returns are not made he shall ascertain the necessary facts from the best information he can obtain and in such manner as he may find convenient, *using his personal knowledge and judgment.*"

And by the General Tax Act, cited and quoted at pages 4-5, *ante,* applicable to the property involved in the instant case, it is provided that:

> "*The assessor* shall ascertain the names of the owners of all real property situate in his taxing district, and, *after examination and inquiry,* determine the full and fair value of each parcel of real property situate in the taxing district," &c. * * *

But the State Board of Tax Appeals is now given no such power of independent *assessing* inquiry as is vested in the State and Local tax *assessors,* but it is confined strictly to the exercise of its *appellate* function. As the Board itself asserted in the *Duke Power* case cited at page 2, *ante,* it is a Court, and it would seem most extraordinary and astonishing if it should be finally ruled and adjudicated that a *Court,* sitting on *appeal,* can lawfully and constitutionally lay aside the evidence and the record of a proceeding before it for judicial determination, and proceed to decide and determine it upon what it terms its personal knowledge of the situation, obtained secretly, and without affording the parties affected an opportunity of knowing about it or being heard regarding it until after its judgment has been rendered.

It is respectfully submitted, therefore, that the State Board of Tax Appeals went entirely outside its jurisdiction

in exercising an *assessing* function, and that in exercising such function it assumed a power which it did not possess in injecting its personal knowledge into the exercise of that non-existent function; and that in basing its determination of value upon a personal inspection of the property, in the exercise of its appellate function, and in the exercise of a non-existent power, without notice of its action to the taxpayer or affording it an opportunity to be heard regarding it, it denied Petitioner due process of law and the equal protection of the laws.

It is also respectfully submitted that the Supreme Court's approval of that action is likewise unsustainable, as pointed out *supra,* as is likewise *per curiam* affirmance thereof by the Court of Errors and Appeals, for by affirming such action they have placed their stamp of approval upon it; and, by failing to consider it, the Court of Errors and Appeals has denied Petitioner its right claimed under the Fourteenth Amendment of the Constitution of the United States (Record, pp. 71-81, 610-615).

It should be noted, also, that the statute *R. S. 2:27A-6* provides that:

> "On pronouncing any judgment, order or decree, either of affirmance or reversal, the opinion of the court of errors and appeals, *containing the reasons for such affirmance or reversal,* shall be delivered in writing."

In affirming the judgment of the Supreme Court, however, the Court of Errors and Appeals expressed no consideration of the merits involved, and made no mention of the due process and equal protection features asserted and claimed by Petitioner under the Fourteenth Amendment. Its opinion is as follows (See Record, p. 616):

"Nos. 42, 43, 44 and 45. May Term, 1942.

NEW JERSEY COURT OF ERRORS AND APPEALS.

HARBORSIDE WAREHOUSE COMPANY, INC.,
Prosecutor-Appellant,

vs.

CITY OF JERSEY CITY, *et als.*,
Defendants-Respondents.

Argued May 21st, 1942; decided September 18, 1942

On appeal from a judgment of the Supreme Court.

For the appellant: Wall, Haight, Carey & Hartpence, Esqs.

For the respondents: Charles A. Rooney, Esq., Frank P. McCarthy, Esq., and John F. Lynch, Jr., Esq.

PER CURIAM

The case as presented exhibits only a dispute of fact with regard to the proper valuation of a warehouse building for purposes of taxation. The determination of the State Board of Tax Appeals, whose opinion is reported at 19 N. J. Misc. Rep. 222, adjudged a valuation which was affirmed in the Supreme Court, whose opinion is reported at 128 N. J. Law 263.

The settled rule in cases of this class is that, where the judgment of the Supreme Court on the facts is supported by proper evidence, this court will not reverse its findings. Kohn vs. McCormick, 103 N. J. Law 110; Angelotti vs. Town of Montclair, 109 id. 360; Ford Motor Co. vs. Fernandez, et al., 114 id. 202.

The judgment will be affirmed.

ENDORSED "FILED
SEP 18, 1942
J. A. BROPHY,
Clerk."

This, it is respectfully submitted, does not conform to the requirement of the statute R. S. 2:27A-6, quoted *supra*, and, in effect, indicates a failure to review the judgment of the Supreme Court and the proceedings in the State Board of Tax Appeals presented by the record, as exacted by the statutes and the Constitution, and denies Petitioner the due process of law and the equal protection of the laws claimed under the Fourteenth Amendment of the Constitution of the United States. Nowhere does it point out what the "dispute of fact" regarding valuation is, nor what the "proper evidence" is of the facts asserted in support of the judgment of the Supreme Court. And we respectfully submit that we have demonstrated that there is no such "dispute of *fact*" regarding valuation, nor is there any "proper evidence" in the case to support the findings of the State Board or the judgment of the Supreme Court.

Conclusion.

For the reasons set forth above, therefore, it is respectfully submitted that this case is one which justifies the granting of a writ or writs of certiorari and thereafter reviewing and reversing the adverse judgments involved, and that the writs prayed for should be granted.

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